



LARRY AND V. CHRISTINA WESTLAKE

188 IBLA 110

Decided July 29, 2016



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LARRY AND V. CHRISTINA WESTLAKE

IBLA 2016-132

Decided July 29, 2016

Appeal from a decision of the Alaska State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void by operation of law for failure to file an affidavit of assessment work. FF061632-33, FF061636-37, FF084718, and FF085155-56.

Affirmed; petition for stay denied as moot.

1. Mining Claims: Abandonment;
Mining Claims: Recordation of Affidavit of Assessment
Work or Notice of Intention to Hold

A claimant who files a maintenance fee waiver certification must perform assessment work during the same assessment year for which the waiver is granted, and then file an affidavit of the assessment work on or before December 30 following the end of that assessment year in accordance with annual filing requirements found in section 314(a) of FLPMA. Failure to timely file an affidavit of assessment work when required is deemed conclusively to constitute an abandonment of the mining claim by operation of law, rendering the claim void. Neither BLM nor the Board has discretion to waive these requirements or to provide relief from the consequences of noncompliance.

2. Estoppel

Estoppel against BLM in matters concerning the public lands is an extraordinary remedy, and must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. Oral misstatements cannot support a claim of estoppel, but instead, a claimant's reliance must be based on a crucial misstatement in an official written decision.

APPEARANCES: Larry and V. Christina Westlake, Kiana, Alaska, *pro se*; Michael P. Routhier, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE ROBERTS

Larry and V. Christina Westlake (Appellants) appeal from and petition for a stay of a February 16, 2016, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring their unpatented mining claims¹ abandoned and void by operation of law. BLM based its decision upon Appellants' failure to file a required affidavit of assessment work (Affidavit) for the 2015 assessment year.

Summary

When a mining claimant files a maintenance fee waiver certification (Waiver Certification) for an assessment year, the claimant must file an Affidavit on or before December 30 immediately following the end of that assessment year.² The failure of a mining claimant to timely file an Affidavit is “deemed conclusively to constitute an abandonment of the mining claim,” rendering the claim void.³ Assertions by Appellants that they did not file their Affidavit based on the oral advice of BLM and State employees, in the absence of a “crucial misstatement in an official written decision,” provides no basis for application of the doctrine of estoppel.⁴ Here, BLM properly declared the subject claims abandoned and void because Appellants did not timely file the required Affidavit. Neither BLM nor the Board has the discretion to waive that filing requirement.⁵

Appellants Did Not Timely File Their Affidavit of Assessment Work

[1] Under Federal law, the holder of an unpatented mining claim is required to pay a maintenance fee for each claim or site on or before September 1 of each year.⁶

¹ FF061632-33, FF061636-37, FF084718, and FF085155-56.

² 43 U.S.C. § 1744(a)(1) (2012); 43 C.F.R. §§ 3835.12, 3835.15, 3835.31(a); *see also* *Paul Dickison*, 186 IBLA 69, 70 (2015).

³ 43 U.S.C. § 1744(c) (2012); 43 C.F.R. § 3835.91; *see also* *Paul Dickison*, 186 IBLA at 71 (citing *United States v. Locke*, 471 U.S. 84, 97-100 (1985)).

⁴ *Carl Holzer*, 185 IBLA 324, 327 (2015) (quoting *Ron Coleman Mining, Inc.*, 172 IBLA 387, 391 (2007)).

⁵ *Paul Dickison*, 186 IBLA at 71; *Carl A. Parker, Sr.*, 165 IBLA 300, 303-04 (2005).

⁶ 30 U.S.C. § 28f(a) (2012); 43 C.F.R. § 3834.11(a)(2).

The Secretary of the Interior has the discretion to waive the fee for a claimant who certifies in writing that, on the date the payment is due, the claimant and all related parties hold not more than 10 mining claims, mill sites, tunnel sites, or any combination thereof, on public lands.⁷ A mining claimant who files such a Waiver Certification is required to perform assessment work during the assessment year for which the waiver is granted, and then file an Affidavit of the assessment work on or before December 30 of the calendar year in which the assessment year ends.⁸ Failure to timely file an Affidavit when required is “deemed conclusively to constitute an abandonment of the mining claim,” rendering the claim void.⁹ Neither BLM nor the Board has discretion to waive these requirements or to provide relief from the consequences of noncompliance.¹⁰

In this case, Appellants filed a Waiver Certification on August 7, 2014, for the 2015 assessment year, *i.e.*, from noon on September 1, 2014, to noon on September 1, 2015.¹¹ They were therefore required to file an Affidavit with the Alaska State Office, BLM, on or before December 30, 2015, but failed to do so.

With their Notice of Appeal (NOA), Appellants enclose a copy of an “Affidavit of Annual Labor for Mining,” which indicates that assessment work was performed in September 2014 and April 2015. That copy is date-stamped March 18, 2016, the date Appellants filed their appeal. The record does not include an Affidavit with a date-stamp to signify BLM’s receipt of that document on or before December 30, 2015; nor do Appellants explicitly state that they timely filed an Affidavit. The absence of the Affidavit in BLM’s records gives rise to a rebuttable presumption that BLM officials have properly discharged their duties and have not lost or misplaced that document.¹² This presumption may only be overcome by probative evidence to the

⁷ 30 U.S.C. § 28f(d) (2012).

⁸ 43 U.S.C. § 1744(a)(1) (2012); 43 C.F.R. §§ 3835.12, 3835.15(b)-(c), 3835.31(a) and (d)(3); *see also Paul Dickison*, 186 IBLA at 70; *Michael Warholic*, 186 IBLA 358, 359 (2015); *Audrey Bradbury*, 160 IBLA 269, 272-75 (2003).

⁹ 43 U.S.C. § 1744(c) (2012); *see also Paul Dickison*, 186 IBLA at 71 (citing *United States v. Locke*, 471 U.S. at 97-100); *Michael Warholic*, 186 IBLA at 360; *Bradbury*, 160 IBLA at 275.

¹⁰ *Paul Dickison*, 186 IBLA at 71; *see also Michael Warholic*, 186 IBLA at 360; *Ronald W. Ruff*, 185 IBLA 320, 322 (2015).

¹¹ *See* BLM’s Case Abstract (Feb. 16, 2016) at 3.

¹² *See Kenneth Pedersen*, 187 IBLA 130, 134 (2016); *Bradford Koles*, 186 IBLA 149, 151 (2015); *Paul Dickison*, 186 IBLA at 72; *Ronald W. Ruff*, 185 IBLA at 322-23; *Christopher L. Mullikin*, 180 IBLA 60, 68-69 (2010).

contrary.¹³ Appellants do not submit any evidence that they timely filed the required Affidavit.

Based on the record, and the facts as outlined by Appellants, we conclude that BLM properly declared their claims abandoned and void by operation of law for failure to file an Affidavit for the 2015 assessment year.

Alleged Oral Misstatements Provide No Basis for Estoppel

In their NOA, Appellants suggest that they did not file their Affidavit for the 2015 assessment year based on oral representations by employees of the Alaska Department of Natural Resources (DNR) and BLM. Appellants state that they were told by DNR that their “State claims were active” and that there was “no reason to file” an Affidavit with BLM.¹⁴ They indicate that they “have done [their] annual assessment work for years,” that they called BLM on August 15, 2015, to inform BLM that they were going to send “them,” but that “[a] man at BLM told [them] that his understanding was that [Appellants] have already moved them to State Claims.”¹⁵ Appellants state that they would “hate to lose [the claims] because of a misunderstanding and conflicting information that [they] received from [BLM and DNR].”¹⁶

In its Answer, BLM asserts that “[w]hile Appellants’ assertions may suggest an argument based on equitable estoppel, the alleged statements referenced in their Notice of Appeal do not warrant application of that doctrine.”¹⁷ We agree.

[2] The law establishes that “estoppel against the Government in matters concerning the public lands is an extraordinary remedy, and must be based on affirmative misconduct, such as misrepresentation or concealment of material facts.”¹⁸ “In accordance with the Board’s precedent, oral misstatements cannot support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official written decision.”¹⁹ Appellants do not allege, and the record bears no indication, that their

¹³ *Kenneth Pedersen*, 187 IBLA at 134; *Bradford Koles*, 186 IBLA at 151; *Paul Dickison*, 186 IBLA at 72; *Ronald W. Ruff*, 185 IBLA at 322; *Christopher L. Mullikin*, 180 IBLA at 68-69.

¹⁴ NOA at unpaginated 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Answer at 6.

¹⁸ *Carl Holzer*, 185 IBLA at 327; *see also Jack C. Scales*, 182 IBLA 174, 180 (2012).

¹⁹ *Carl Holzer*, 185 IBLA at 327 (quoting *Ron Coleman Mining, Inc.*, 172 IBLA at 391).

failure to file the required Affidavit was based on affirmative misconduct by BLM. Since the alleged misstatements at issue in this matter were oral rather than in an official written decision, there is no basis for application of estoppel in this case.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,²⁰ we affirm the decision and deny the petition for stay as moot.

_____/s/
James F. Roberts
Deputy Chief Administrative Judge

I concur:

_____/s/
Amy B. Sosin
Administrative Judge

²⁰ 43 C.F.R. § 4.1.